

### **REMARKS/ARGUMENTS**

Reconsideration of this Application and entry of this Amendment is respectfully requested.

As a result of the response to restriction requirement filed on July 27, 2007, claims 9-10 and 15-16 were withdrawn and claims 1-8, 11-14 and 17-25 were examined on their merits. In the current reply, Applicants have amended claims 1, 4, 11, 14, 17, 20-22 and 25; canceled claims 5-10, 13, 15-16, 18 and 23-24 and added new claims 26-28. New claim 26 finds support in, at least, originally filed claim 17. New claims 27 and 28 find support in, at least, originally filed claim 6. Applicant reserves the right to pursue the subject matter of the canceled claims in one or more related applications.

The amendments to the claims merely comport the claims with the elected subject matter. The claims have been amended to recite the elected species acrylic polymers or copolymers and bortezomib. The Examiner stated on page 2, section 1 of the Office Action dated September 11, 2007 that “[a] search was conducted on the elected species of acrylic polymer as the polymer coating the surface of the stent, and this appears to be free of prior art.” No new matter has been introduced as a result of the claim amendments.

By the amendments, Applicants do not acquiesce to the propriety of any of the Examiner’s rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

### **Objections**

2. The title has been objected to as being too long. Applicants respectfully traverse. According to 37 CFR §1.72 and MPEP §606, “The title of the invention may not exceed 500 characters. . .” The title of the instant application is 74 characters long, well within the requirements, and is clearly indicative of the invention to which the claims are directed. Therefore, the title is in compliance with 37 CFR §1.72 and Applicants respectfully request that the Examiner withdraw this objection.

3. The specification has been objected to because of a spelling error in paragraph 0012. Typographical errors were corrected in paragraphs 0012, 0045, 0069, 0109 and 0112.

### **35 U.S.C. §112 Rejections**

5. Claim 6 has been rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 has been canceled. Therefore Applicant asserts that the rejection is now moot and respectfully requests the Examiner withdraw the rejection.

### **35 U.S.C. §102 Rejections**

8. Claims 1, 4, 6-8, 12, 20-21 and 23-25 have been rejected under 35 U.S.C. §102(e) as being anticipated by Epstein SE (PGPUB 2004/0116329) as evidenced by Adams J (Expert Opinion Ther. Patens, 2003, 13(1):45-57). Applicants respectfully traverse.

A claim is anticipated under 35 U.S.C. §102 only if each and every element as set forth in a claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131; *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d, 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987)).

The instant claims, as amended, are drawn to a medical device for delivering an anti-restenotic composition comprising: a stent having a generally cylindrical shape comprising an outer surface, an inner surface, a first open end, a second open end and wherein at least one of said inner or said outer surfaces are coated with a polymer comprising an acrylic polymer or copolymer wherein said polymer has bortezomib incorporated therein and said polymer releases said bortezomib into a tissue of a mammal. Claims 1, 4, 20, 21 and 25 have been amended and claims 6-8 and 23-24 have been canceled.

The Examiner has stated on page 2, section 1 of the Office Action dated September 11, 2007 that the elected species of acrylic polymer as the polymer coating the surface of the stent, appears to be free of prior art. Applicants have amended the claims to recited acrylic polymers

and copolymers. Therefore, Applicants respectfully request that the rejection of claims 1, 4, 12, 20-21 and 25 be withdrawn.

**35 U.S.C. §103 Rejections**

13. Claims 2-3, 5, 11, 13, 14, 17-19 and 22 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Epstein SE as evidenced by Adams J as applied to claims 1, 4, 6-8, 12, 20-21 and 23-25 above and further in view of Palasis et al. (PGPUB 2004/0106987). Applicants respectfully traverse.

The instant claims, as amended, are drawn to a medical device for delivering an anti-restenotic composition comprising: a stent having a generally cylindrical shape comprising an outer surface, an inner surface, a first open end, a second open end and wherein at least one of said inner or said outer surfaces are coated with a polymer comprising an acrylic polymer or copolymer wherein said polymer has bortezomib incorporated therein and said polymer releases said bortezomib into a tissue of a mammal. Claims 1 (from which claims 1-3, 5 and 11 depend), 14 (from which claims 17 and 19 depend) and 22 have been amended and claims 5, 13 and 18 have been canceled.

The Examiner has stated on page 2, section 1 of the Office Action dated September 11, 2007 that the elected species of acrylic polymer as the polymer coating the surface of the stent, appears to be free of prior art. Applicants have amended the claims to recited acrylic polymers and copolymers. Therefore, Applicants respectfully request that the rejection of claims 2-3, 11, 14, 17, 19 and 22 be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

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